TL335

WHY AND FOR WHAT I AM STRUGGLING

The Defence Plea of Fernando de Araujo

Presented to the Public Prosecutors Team in the Central JakartaState Court on May 11, 1992

for the sake of the self-determination of the Maubere people

INTRODUCTION

The Honourable Judge, Public Prosecutor, Legal Advisors and all present here today, we give thanks to Almighty God for his mercy and gifts which have allowed us to see this hearing through from the beginning to this, the defence stage of proceedings.

We pray to God that all of his community may be enlightened to hold in high regard His truth, and in particular that with God's help, [the] Your Honour will be in a position to guarantee the independence of this Court by giving due consideration to every fact relating to our cases, and particularly that of international law which represents the basis of our defence and to whose authority we are all subject.

Your Honour, we take this opportunity to put forward for your consideration a number of issues and opinions which have either direct or indirect relevance to our cases.

A charge of 15 years imprisonment for subversion as been laid against us is possibly appropriate and relevant for an Indonesian citizen. However, for the sons of East Timor who have been justly struggling for a basic human right, that is the right to determine our future, such charges are unethical, illogical and unacceptable. In charging us in this era of democracy, the Public Prosecutor has enforced laws inherited from the colonial power and adapted to suit a regime undergoing a revolution. Let us uphold the ideals of democracy since this is indeed the direction the world is taking. The right to freedom, to self-determination, to life, to free expression of opinions and aspirations and the right to liberty outside prison walls are all fundamental and God given rights. The violation of human rights in East Timor is a fact which today's world will not allow to be kept covered up.

The problem of East Timor is not an internal one for Indonesia to solve, but rather an international one which can only be resolved with diplomacy as opposed to use of the iron rod of legal processes or butchery with weapons. The use of coercive threats of imprisonment to resolve the issue of East Timor is like asking the two parties in a road accident to settle the dispute out of court; the least powerful of the two parties will inevitably lose out to the more powerful one.

On 7 December 1975, the people of East Timor took up arms against the Indonesian invaders, inspired with the desire to defend their freedom and their human rights. Many lives were lost in the defence of their rights, their culture, traditions and identity as one of the world's nations. On 12 December 1975, the world's most authoritative body, the United Nations, of which Indonesia is a member state, issued through its General Assembly Resolution Number 3485 which, amongst other things, recommended to Indonesia to respect the right of the East Timorese people to freedom and self-determination. On 24 December 1975, the UN Security Council passed Resolution Number 384 which, in addition to reiterating the demands of Resolution 3485 of the General Assembly, urged the withdrawal of Indonesian troops from East Timor. On 22 April 1976, the Security Council adopted a further resolution (Number 389) which, inter alia, called on all nations to respect the integrity of East Timor and its right to self-determination as prescribed by Resolution 1514 (XV) and urging the withdrawal of Indonesian troops. Resolutions of this kind were adopted continuously from 1975 to 1981. Beginning in 1982, the issue of East Timor was no longer debated in the UN

General Assembly. In that year the UN Secretary General recommended that Portugal and Indonesia enter into negotiations with the aim of reaching a peaceful and internationally acceptable solution to the problem. Those negotiations took place from 1982 to 1991 under the direct auspices of the UN Secretary General, Xavier Perez de Cuellar. The fact that the issue of East Timor was no longer discussed in the General Assembly didn't mean that the issue was wiped off the UN agenda. In a meeting between the Secretary General and the Parliamentarians for East Timor group in New York in March 1991, de Cuellar stated that all UN resolutions remain in force and valid until they have been implemented.

Your Honour, that the problem of East Timor is not purely a domestic one for Indonesia has been confirmed by President Suharto himself in a statement published in Kompas on 18 April 1992. Responding to the recommendations of the UN Secretary General, the President stated his government's willingness to serve the UN in seeking an internationally acceptable solution of the issue under UN auspices. From this statement it is clear to me, and must also be to Your Honour, and the Indonesian and international communities that the question of East Timor has not been adequately resolved and that it is not an internal Indonesian affair.

Law No 7 of 1976 along with the decisions of the People's Deliberative Council and the Presidential decrees on which our prosecution has been based, are without foundation and simply represent Indonesia's unilateral claim to East Timor. These laws are not applicable since:

- before the Indonesian invasion of East Timor, the country had already proclaimed its independence

- the majority of the East Timorese people had taken up arms against the Indonesian occupation of East Timor

- before the passing of the above acts, the UN had already issued 3 resolutions, that is Resolution Nos 3485 (1975-General Assembly), 384 (1975-Security Council) and 389 (1976-Security Council) which opposed Indonesia's occupation of East Timor

Imprisonment of all those who are opposed to Indonesian occupation and the slaughter of everyone who openly expresses their aspirations do not constitute an internationally acceptable resolution of the problem.

The principle of democracy is a popular topic of debate and study, particularly in the context of today's shifting world order in which nations are vying with one another for the privilege of being the most democratic nation.

Indonesia is known to be a democratic nation which guarantees the rights of citizens to freedom of speech, association and the expression of divergent opinions. Indonesia is one of the founders of the Non-Aligned Movement and in 1955 initiated the Asia Africa Conference which resulted in the Ten Principles of Bandung. As a member state of the UN, Indonesia has been active in sending peace missions to the Congo, Namibia, Kuwait, Cambodia and other countries. The aim of these Indonesian peace missions was to enforce UN Security Council resolutions. But what about resolutions passed in relation to its own actions? Should Indonesia's past noble actions be seen simply as a decoy for its own shame?

Indonesia's presence in East Timor has resulted in the loss of 200,000 civilian lives and the denial of the people's right to freedom of speech and association. Indonesia has attempted to trade off these rights for luxurious houses and asphalted roads. A colonial mentality is very much in evidence, as are the `Divide and Rule' tactics of the authorities, according to which people are paid to spy on their fellow Timorese and mutually suspicious groups are formed. The consequences of this are that the Timorese people have become enemies of their fellow countrymen, and the harmony, stability

and mutual understanding handed down from past generations has been lost. This former peace is epitomised by the philosophy: `An item of food, whilst unripe, is individual property, but once ripe, it becomes collective property' (Matak ida-ida nian tasak han hamutuk). East Timor managed to rid itself of 450 years of European colonial domination in much the same way as the Indonesian people in 1947 and 1948 were able to do against the Dutch who threatened to rob them of their newly proclaimed independence. The goal of all mass movements and resistance is freedom.

II a. EAST TIMOR BEFORE THE INDONESIAN INVASION

East Timor possesses its own unique national, cultural, political and philosophical identity.

Before the coming of the Portuguese, East Timor was divided up into a series of independent petty kingdoms, each of which respected the ethnic and cultural boundaries of the others. The 32 language groups which exist today correspond to the traditional frontiers of these petty kingdoms. Over time, East Timor underwent a process of acculturation, assimilating traditions of both local cultures and those of the colonial power and other foreigners attracted by the prospect of trade.

In 1516, Portuguese missionaries who had already made contact with other Asian peoples, arrived in East Timor. In accordance with their chief mission which was to propagate the Catholic faith through the leaders of each petty kingdom, a colonial government was not immediately established. Because of this primary mission, none of the vast array of sea and land weaponry deployed by Indonesia in 1975 was used by the Portuguese. The Portuguese came bearing only the Cross. With religion and humanity, slowly but surely the petty kings were made to submit to the Portuguese. Their approach was subtle and did not make use of force or intimidation, but rather represented an effort to win the hearts of the kings by respecting their traditional authority, customs and independence. With the propagation of their faith, the Portuguese did not insist that the animism embraced by the Timorese people was bad, but offered the freedom for both religions to co-exist. It is only right that we acknowledge that in terms of human relations, the Western civilisations are far more advanced than ours in the East. If we are going to imitate the ways of the West, we should pay particular attention to its humanitarianism. An example is that of Bung Karno (Indonesia's first President) who, although he had already begun a campaign opposing Dutch rule in Indonesia, was allowed by his colonial masters to complete his tertiary education.

Only after their religion had been embraced by the East Timorese kings did the Portuguese impose a colonial government. East Timor was governed as an overseas province of Portugal, known in Portuguese as a `provincia ultramarina'. The colonial administration in East Timor was headed by a governor and consisted of 13 provinces, each with their own administrative divisions; the head of each province (bupati) was known as the `administrador', the sub-district chief (camat) as the `chefe de posto', the chief of a group of villages (lurah) as the `chefe de suco', and the village head (kepala desa) as the `chefe de povoacao'. In practice, the only difference in the system now in operation under Indonesia is in the names, with only the eras of the 2 colonial systems differing radically. The era of the Indonesian colonial occupation is one of freedom and respect for human rights in accordance with international pressures, whilst the Portuguese occupation was initiated during the colonial era. Portugal was governed by a President, as is Indonesia. Its citizens also carried identity cards, known in Portuguese as `carta de identidade', and the majority of students in schools in East Timor were native East Timorese.

Portugal was aware at an early stage of Timor's vast natural resources; of the natural oil and gas reserves in the Timor sea which are amongst the world's largest; of the island's rare sandalwood and of the uranium prized by the industrialised countries as a raw material. Despite this, Portugal did not go all out to exploit these riches, but rather respected them as the property and wealth of the Timorese people. Was it a question of Portugal not having the capability or facilities to exploit this wealth? If Portugal had offered industrialised countries such as Germany and Japan the chance to work together with them in exploiting Timor's natural resources, were they afraid there would be a lack of interest? Perhaps the desire to carry this out existed, but East Timor's geographical location

did not facilitate the transport of these resources to Portugal. These possibilities are more than argumentative since beginning in the 12th and 13th centuries up to the present day, world trade is dependent on cooperation between nations.

During the Portuguese colonial era, there was no transmigration of European settlers to East Timor. No Europeans came asking for work, there was no influx of bakso sellers, no intelligence personnel in the villages, no platoons of soldiers in every small hamlet terrorising and intimidating the population. There was no tax on livestock, homes or plantations. And so too with the medical system; the sick had a right to a medical service since the government had provided funds for this. Corruption was rare since the state of the economy did not encourage it. At a day to day level, there was no inspection of identity cards, nor the need for travel passes for movement between districts or towns. The reason for their requirement today is said to be because East Timor is still a war zone. A war against whom? Isn't it often said that the people have accepted integration as the direction of their future? Are there still Europeans in East Timor fighting against the Indonesian occupation? Requesting no assistance from Indonesia, the East Timorese people have already driven those Europeans from their homeland, not because they were tired of the colour of their skin, and desired that it be replaced by a brown-skinned colonial race, but because the people of East Timor realised that for 450 years their right to be free had been violated.

People enjoy comparing the East Timor of the past with the East Timor of today. Actually, making such comparisons is illogical, since the past is history and history is not learned or written in order to make comparisons with regard to the question of development. It is particularly irrelevant to draw comparisons between a colonial era and today's world which is one of development and human rights, since everyone knows that natural processes mean the growth of a tree planted a year ago and that of a tree planted a week ago are completely different. Change happens in accordance with human development, the process of time and the demands of each particular era. These processes go on regardless of short or long term plans.

East Timor too has been affected by changes in era and in levels of human civilisation. Prior to the 50's, almost all of the clergy in East Timor were Europeans, but since that time more and more native Timorese have been admitted to the priesthood, just as since the 60's East Timorese began to replace Europeans in colonial administration. If such developments had continued, then the chances of a native being promoted to the position of governor, as has happened under Indonesian rule, would have been great. However, even if the governor had been a native of East Timor, as the head of a colonial territory, he would still have been answerable to the Portuguese President.

The concept of colonialism is not limited to the domination of a white race over a black or white skinned one. Colonialism means that the colonialist is in control of the regulations in force in the colonised territory and has the upper hand over the colonised peoples who have no freedom of association or expression. In the broader context, it could be said that Japan has colonised the world economy, that Holland has attempted to re-colonise Indonesia economically, with the result that Indonesia has refused all Dutch aid, and that as international policeman, the US has colonised the world by forcing upon it its will by means of the UN Security Council.

Not wishing to be colonised any longer and recognising his people's right to be free, king Boaventura led a rebellion known as the Manufahi rebellion against the Portuguese in 1912. Before this Boaventura had gained the agreement of all of the East Timorese petty kings to drive the Portuguese out from their land. However, communication difficulties meant that the mounting of a united and coordinated rebellion was impossible, and taking advantage of this shortcoming, the Portuguese were able to resume control after a battle which lasted a number of months. Nevertheless, this rebellion inspired the people to fight on for their rights and made them aware of their responsibilities to their own people.

Thus, the desire to expel the colonialists, along with the knowledge that freedom is the right of all

nations, has existed in the consciousness of the East Timorese people since 1912. Claiming that one's own people have the right to independence is also to acknowledge the right of other nations to that same independence. Freedom is not the exclusive right of large and powerful nations. Powerful countries should not concoct reasons for robbing smaller nations of their rights.

b. REVOLUTION IN PORTUGAL

On April 25, 1974 a revolution known as the `Rose Revolution' occurred in Portugal. Confusion reigned in the Portuguese government as a result of the revolution, and consequently it was seen to be impossible for it to maintain its control over its colonial territories. Therefore, the President of Portugal proclaimed the date of the revolution, that is 25 April 1974, as liberation day, publicly proclaiming to its overseas territories that they would be granted their right to self-determination. The provinces were free to establish political parties and to campaign for their political convictions.

True self-determination implies a people's guaranteed freedom of choice, in the absence of any form of external pressure. A process of self-determination cannot be said to be valid, if prior to that process taking place a territory has been overrun by a military power. In such a case the process is invalidated since it represents the efforts of one society to determine the political future of another. For a true act of self-determination to take place, the concerned authoritative bodies must be able to create conditions of freedom, security and stability and respect the opinion of the majority of the subject population. The people must be given the chance to choose freely and directly, using the `one man, one vote' system.

As a result of Portugal's relinquishing of its colonial territories, Angola, Mozambique, Guinea Bissau, and Cape Verde all became independent nations, including East Timor which proclaimed its independence on 28 November, 1975.

The proclamation of East Timor's independence represented a realisation of the aspirations of the majority of the population to give expression to their right as prescribed by the 1945 Constitution which states that freedom is the right of all peoples and therefore colonialism must be eradicated from the world for its injustice and inhumanity. Why must this same country look for an excuse to dispute the independence of East Timor? Is it fair to claim that a small number of East Timorese who fled to the eastern Indonesian islands truly represent the Timorese people and that their opinion constitutes a valid act of self-determination.

It is proper that the world should admire the Panca Sila and the 1945 Constitution because the values they embody are indeed noble ones and the 1945 Constitution is in exact accordance with the UN Declaration (of Human Rights) and also with the demands of our world today. However, in practice these lofty values are not reflected at all. There is nothing in the Panca Sila about slaughter, annexation or violence. The Indonesian people should be grateful that their former leaders embraced such noble ideals. The great shame is that they have been betrayed by those who hold power today in this country.

THE FORMATION OF POLITICAL PARTIES IN EAST TIMOR

The people of East Timor greeted the new freedom announced by Portugal on 25 April 1974 with great enthusiasm because they realised that this was their chance to be freed from the shackles of colonialism which had bound them for 450 years; that the moment had come for them to organise and to freely express aspirations which had until then been suppressed by Portugal.

In a fairly short time, East Timor's sons and daughters formed political parties in order to give expression to the people's political aspirations which were ignited as a result of the new freedom granted by the Portuguese government.

In 1974, the year of independence for all of Portugal's former colonial territories, the East Timorese

took the opportunity to establish 5 political parties, all of which had in common the aim of independence. None were based on a principle of integration as it exists today.

The following are the 5 political parties and their political convictions:

1. **FRETILIN (Frente Revolucionaria de Timor Leste Independente)** desired complete independence from Portugal and did not request that Portugal fully complete the decolonisation process. This party had the support of the majority of the population. The people backed Fretilin because of the speed with which it aimed to free the country from the shackles of colonialism and its revulsion at the colonial mentality which had robbed the people of their right to be independent. With its liberal and open campaigns, it managed to attract the sympathy of the majority of the people. People openly supported the party because they could see that it best reflected their aspirations. Nevertheless, at the time there were elements which were keen to twist the facts, and the people in their naive state were easily agitated. These elements subscribed to a feudalistic view which undervalued the qualities of the colonised Timorese population and always attempted to propagate in them an inferiority complex towards the feudalists and colonialists. To say that Fretilin was communist is unfounded propaganda which represents nothing other than a quest by certain elements to attract the backing of communist-fearing nations. 99% of the East Timorese population are Catholics and their culture and traditions naturally turn them away from a communist ideology. They supported Fretilin because they knew it was not communist, but was simply best able to give expression to their aspirations.

2. **UDT (Uniao Democratica de Timor)** was the largest of the parties because it also fought for the independence of the East Timorese people. It differed from Fretilin in that it wanted complete independence from Portugal, but desired that the colonial power complete first the decolonisation process. The decolonisation process it desired was one which involved Portugal remedying the shortcomings of its administration before surrendering power to the native East Timorese. Because of these principles, the East Timorese people didn't hesitate in lending it their support. Never once during the vigorous campaign conducted by its leaders in 1974 and 1975, was the word integration mentioned. If one or two of its leaders did express sympathy with the idea, they were speaking in a personal capacity and not as representatives of the UDT supporters. UDT was founded on a principle of independence, not integration with Indonesia, and those particular leaders, if put crudely, could be rightly considered traitors of all those who were behind UDT.

Their flight to the eastern islands of Indonesia did not mean that they were accepting integration but rather that they needed to reach Atambua to save their lives because of the turmoil in their homeland. Flight to a neighbouring country is normal and has happened at various stages all over the world. At that time, Joao Carrascalao, the UDT Commander who led the armed wing of the UDT, fled to Atambua. Domingos de Oliveira, the Secretary General of UDT was at the time working alongside the Fretilin leadership and non-aligned groups abroad within the joint organisation known as the Nationalist Convergence (Convergencia Nacionalista) for the self-determination of the people of East Timor. Domingos de Oliveira was one of the UDT members who signed a document often referred to as the `Balibo Declaration'.

3. **APODETI (Asociacao Popular de Timor)** had the least support of all of the parties. Its aims were not integration but the formation of a state with ties to Indonesia. The party was unable to attract a great deal of popular sympathy since, as a bordering country, the East Timorese people were able to see themselves the standard of living attained by their neighbours. In addition, there was nothing in the Indonesian Constitution which recognised an allied nation.

4. **The Klibur Oan Timor Aswain (KOTA)** party intended that East Timor become a Monarchy once again as it had been before the coming of the Portuguese. The KOTA party didn't have ambitions to compete seriously with the other parties and offered them its support. Jose Martins, the party's leader who was also a signatory to the Balibo Declaration, is now in Australia and is working closely with UDT and Fretilin leaders under the banner of the Nationalist Convergence for the self-determination of the East Timorese people.

5. The Trabalhista Party was a worker's party aimed at promoting the interests of East Timorese workers. It was not pro-integration and it was understood by the people to be a nationalist party.

Each of the 5 parties carried out their political activities in a climate of freedom, independent from the dictates of the Portuguese government.

C. THE COUP OF 11 AUGUST, 1975

On 11 August 1975, the UDT forces under the command of Joao Carrascalao launched armed actions in each of East Timor's cities in an effort to take control of the situation in the name of the self-determination of the East Timorese people. Seeing UDT about to dominate the situation with the use of military might, on 20 August, 1975, Fretilin, with the support of the majority of the indigenous Timorese soldiery, fought back. Realising that Fretilin had won a good deal of mass and army support, and since they could no longer hold out in Dili, UDT was forced to flee from the city, and then eventually as far as the eastern Indonesian islands.

As the succeeding generation, we very much regret the occurrence of the above incident, yet on the other hand we understand it to be the consequence of the political immaturity of our forefathers. From another viewpoint again, looking at the history of the world, such upheavals have been commonplace, with recent examples still being played out in Cambodia, Afghanistan, Yugoslavia, the Soviet Union, Angola and other nations. In these cases, neighbouring countries have not sought to use the opportunity to stage a takeover, but have rather directed their peaceful interventions through the UN.

The refugee problem is also a common one and it is the responsibility of the host nation to guarantee the safety and well-being of the refugee.

E. THE DEMOCRATIC REPUBLIC OF EAST TIMOR PROCLAIMS ITS INDEPENDENCE

On 28 November 1975, Fretilin which enjoyed the support of 75% of the East Timorese people, proclaimed East Timor's independence. It was considered urgent that such a proclamation be made, since from the beginning of November 1975, Indonesia had started to intervene along the border. Such a proclamation was legitimate because Fretilin had majority support. The text of the declaration of independence was read by Francisco Xavier Lopes do Amaral who was acclaimed as the first President of the Democratic Republic of East Timor. The proclamation was urgent in order to deter an invasion from Indonesia. The new President sent a diplomatic mission, led by Foreign Minister Jose Ramos Horta, to condem Indonesia at the United Nations since at that time the country had begun its invasion from the west, and also to seek recognition amongst UN member nations of East Timor's proclamation of independence. Although it was recognised by 72 member states, because Portugal as the colonial power withheld the granting of its own recognition, Fretilin, in a spirit of openness and democracy, acknowledged that their independence proclamation had been unilateral, and began to base their struggle on the right to self-determination. Despite this, if a referendum had been called on the issue, the majority of the people would have wholeheartedly supported the proclamation. The proclamation of independence of East Timor is the same as that proclaimed by the Indonesian Republic in 1945 and the right to freedom which we are today defending is the same one defended by the sons and daughters of Indonesia at the time when Holland attempted to re-colonise their homeland.

F. THE BALIBO DECLARATION

The Balibo Declaration dated 30 November 1975 was formulated by the refugees who on 11 August 1975 had failed in their attempted coup. Because Falintil (the National Liberation Forces of East Timor) was at that time in control of every region in East Timor, including the town of Balibo, located close to the border with East Nusa Tenggara, there was some concern about the place

chosen for the signing of the declaration.

The declaration was engineered by Indonesia in order to justify its invasion of East Timor.

Such political manipulation was possible only because the signatories of the declaration nad been forced to flee and were in an unstable situation as a result of this failed coup attempt. It is appropriate for it to be referred to as political manipulation since Indonesia has continued to make reference to the declaration to facilitate its diplomatic efforts in international fora, whilst at the same time using it as an rationalization to try to convert the opponents of Indonesian rule. The Declaration, which is not a true reflection of the aspirations of the people, was adopted as the basis for Law No 7/1976, Presidential decrees, those of the People's Deliberative Council (MPR), and others. Those who were coerced into signing the declaration were eventually disappointed. Domingos Oliveira, Secretary General of UDT, and Jose Martins, one of the leaders of the Kota Party, both signed the declaration immediately prior to fleeing their homeland and becoming refugees overseas. In order to be able to continue to struggle for the rights of their people, both individuals have now united with other leaders from Fretilin and UDT under the non-party banner of the National Convergence, formed in 1986 in Lisbon, Portugal. The Balibo declaration has no legal basis for the following reasons:

1. The signatories were refugees

2. A question hangs over Balibo as the town where the declaration was signed, since at the time all of East Timor, including Balibo, was under Falintil control

3. The declaration is not a true reflection of the people's aspirations since the people were opposed to integration, as evidenced by the overwhelming popular support enjoyed by the East Timorese political parties during their campaign period. The party supporting integration with Indonesia won only 6% of the vote

4. The signing of the declaration did not take place in the capital city as the centre of all political and other activities

5. The declaration was signed 2 days after Fretilin and the people proclaimed their independence in the East Timorese capital

6. The document diverged from the party platform of the signatories. One could even view the declaration as a betrayal of the people of East Timor, since it did not represent the aspirations of the people, and the signatories were acting under their own authority, not that granted by the people.

Further proof that the Balibo declaration does not accurately represent the aspirations of the people can be seen in the fact that over 200,000 people have surrendered their lives in the defence of their homeland and against the territorial ambitions of Indonesia. Many have been forced to leave their homeland and to become refugees, whilst others suffer in prisons as a result of their efforts to free their country.

III EAST TIMOR AFTER THE INVASION

On 7 December 1975 at approximately 5 o'clock, the Indonesian armed forces officially invaded Dili, employing all of its military strength in the form of its air, sea and land forces. I say officially, since from the beginning of November, Indonesian forces had already begun with incursions along the border with East Nusa Tenggara.

On that black morning, the people of Dili woke to the sight of parachutists descending on the city, and to the sound of cannon blasts from the sea, mortar and automatic weapons fire from the land. In order to defend their country and independence, the Falintil forces fought back against the so-

phisticated weaponry of the invading forces, and a bloody battle which cost many lives from both sides ensued. The innocent civilian population of Dili were made the main target of the Indonesian attack, and for a number of days bullets pelted the town like rain, spilling the blood of many innocent lives. No longer able to hold out against the modern and well-equipped Indonesian military arsenal, Falintil and the people were forced to withdraw to the outskirts of the town, or to flee to the hills, to seek shelter in caves where many of them perished since the entrances to many caves were blocked as a result of bombing raids.

Many fathers were shot dead in front of their children and wives, children were separated from their parents, and mothers were forced to abandon their babies because of the indiscriminate attacks launched by the aggressor's army. The Indonesian government has always tried to hide its military aggression behind the rationalisation that the people requested its intervention. If this was in fact the case, why have so many people been slaughtered, why have so many military been sent to East Timor? To fight the Portuguese army? The East Timorese people had already driven the Portuguese from their land before Indonesia landed its 1st troops in East Timor. If the East Timorese people had truly wanted an Indonesian presence in their land, they would have greeted them with necklaces of flowers and traditional dances as is the local custom. They wouldn't then have greeted them with gun fire and opposition. A spattering of blood is no necklace of flowers, the sound of gunfire is no poetry reading, and murder could hardly be confused for the embrace of two friends. The declaration engineered by Indonesia and known as the Balibo Declaration is their official excuse for their invasion of East Timor.

A) VIOLATIONS OF HUMAN RIGHTS

Indeed, every point mentioned thus far in this document represents a violation of a human right, and what follows will simply serve to give emphasis. What follows is only a fragment of the total number of violations, and these facts are perhaps already known in international fora. Over the past 16 years, the government has made strenuous efforts to hide incidences of human rights abuses. The latest proof of this can be seen in the attempts of the government to hide the facts of the bloody incident of November 12 at which time the local security apparatus covered up the total number of dead, hiding the corpses and claiming that only 19 had died; despite taped video evidence to the contrary. From this example it is clear that even atrocities occurring in the public eye are capable of being covered up, not to mention those which happen behind closed doors. However, as the saying goes, no matter how clever a man may be in disguising his crime, in the end he will be found out. What we have found out is the following:

1. DILI

- On 7 December, 1975, the first day of the Indonesia aggression, 160 civilians, most of them women and children, were slaughtered on the Dili harbour front. Amongst the corpses thrown into the sea were the wife of the 2nd President of the Democratic Republic of East Timor.

- On 8 December, 1975, around 60 people, mainly civilians, were murdered in front of the University of East Timor building and the corpses were burnt nearby a week later.

- On 14 December, 1975, in Kali Malua, which is the site of present-day Bairro Pite, 14 youths, amongst them my cousin, were ordered to line up and were then shot dead.

- On 18 April, 1979, in Taci Tolu, up to 50 people were executed with the excuse that they were planning to rebel.

- On 10 June, 1980, up to 300 people were executed for supposedly planning a rebellion, and their corpses thrown into the Taci Tolu marsh.

These victims of Indonesian atrocities in Dili do not include those living on the outskirts of the town.

2. AILEU

- Most of the population of Aileu perished fleeing Indonesian bullets, so that it took people from Ermera, Maubisse and Lete Foho to fully occupy the town.

3. AINARO

- From 1976 to 1984, most of the population of Soro, Maununo, Leotelu, Hatu Mera and Mausiga were slaughtered by Indonesian troops in Ainaro.

- At the beginning of 1976, I myself was handed a pistol by the troops and ordered to shoot people who I looked upon as members of my family. They had been tied up like animals ready for the slaughter, and I never saw them again.

- In 1979 in Hatu Udo, a man named Bernardino Feras was ordered by soldiers to dig his own grave in the middle of the market and was then ordered to stand on the mouth of the grave. Then, in the presence of the market crowd and his own wife and children, he was struck by a rice pestle and murdered. The most barbaric murders have been performed with the excuse that the victims were in contact with relatives fighting in the bush.

- In the middle of 1983, a junior high school colleague of mine who had become a policeman was tied up, and in front of the local people, was dragged all around the town of Ainaro by a `Kijang' landrover which had red number plates and belonged to the subdistrict of Ainaro, until he was dead. His body was then burnt in the soccer field, with the local community forced to witness the spectacle. This cruel murder was carried out because the victim again was suspected of having contacts with the guerrilla forces.

4. MAUBARA

- On 16 March, 1979, more than 20 civilians, most of them of Chinese descent, were murdered on the Maubara beach, having been accused of providing logistical assistance to the resistance forces. Their bodies were never returned to their families.

5. VIQUEQUE

In 1985, the entire population of Krararas was completely exterminated by Indonesian troops under the accusation that the inhabitants of the village frequently received visits from the guerrillas and that they were planning resistance activities.

6. ATAURO

In the 1980s, hundreds of people died of starvation in concentration camps on Atauro island. The island was a place of exile for prisoners and people suspected of having contacts with the guerrilla forces.

7. TORTURE IN DETENTION

From 1976 to the present time, hundreds of thousands of East Timorese have been tortured, and forced to say things that the Indonesian military want them to. Their cruelty knows no limits, with the torture occurring in places of detention and with the result that many prisoners have perished: they are beaten unconscious, bound and hung upside and then one their genitals burnt with the butts of cigarettes. Even more barbarous is the way they treat the women, inserting bamboo sticks into their vaginas. Many have been raped and have returned home in a pregnant state.

At the end of 1988, an incident known as the Santo Antonio case occurred, when hundreds of people were rounded up in both Dili and the towns of the eastern sector. They were treated like animals, forced to take rocks into their mouths and were then slapped, punched, beaten with rifles, and kicked with military boots, amongst other things. On the prisoners backs they piled kindling and lit it just as they would light an ordinary fire. They were put in the tiniest of cells which were only just large enough for sleeping. One couldn't even sit up in them properly. They were kept there for weeks and weeks, sleeping on top of human excrement and washing in urine.

Your Honour, from the above examples of human rights violations occurring in East Timor over the past 16 years, it should be clear that I am not the first, and nor will I be the last victim. And nor will the problem of East Timor finish with my being sentenced to 15 years imprisonment. The struggle of our people for self-determination is the struggle of an entire generation, as has been evidenced over the past 16 years. Therefore we appeal to all those responsible for enforcing the law in this country to be prepared to work together with the executive party to seek an internationally acceptable solution to the East Timor question. Solving the problem of East Timor does not mean exterminating all those who are in support of the use of democratic processes, and nor does it mean imprisoning all those who still possess the spirit to express their aspirations.

The kind of democratic and international solution we hope for is one, whereby the Indonesian government opens the way to democratic and effective cooperation with the UN, the Portuguese government and other involved parties in the organisation of a referendum in East Timor, so that the people have the freedom to determine their own future in a way which respects the majority vote. The rigid and inflexible stands taken by each side up until now have only served to torment the civilian population of East Timor. The Indonesian government's efforts over the last 16 years to unilaterally solve the problem of East Timor with the use of arms, warfare, imprisonment, intimidation, terror and `development' are not effective any longer because they are unacceptable to both the people and the international community. The time has arrived for democratic thinking.

Your Honour, Public Prosecutor, Legal Advisors, Ladies and Gentlemen. For the people of East Timor, 16 years of living in a difficult and uncertain situation is more than enough. In view of this fact, we the young generation, inspired by democratic ideals, wish to state that our demands with regard to our problem are simply that a democratic process be followed; that is, the organisation of a referendum in East Timor under the direct supervision of the United Nations, in order that the people may freely determine their fate. If they decide on integration, or independence, then if this is the decision of the majority, we must accept and acknowledge this reality. We must not separate ourselves from our people, our parents, our brothers and sisters.

B) The UN Position

Five days after Indonesia's invasion of East Timor, that is on 12 December 1975, the UN General Assembly passed Resolution 3485 which, amongst other things:

- Condemned Indonesia's invasion, calling on it to respect the fundamental right of the East Timorese people to self-determination.

- Called on Indonesia to unconditionally withdraw its troops from the territory.

- Called on Portugal as the administering power to make every effort to come to a peaceful settlement of the problem by calling a meeting of the Portuguese government and the political parties representing the people of East Timor.

- Expressed its deep regret at Indonesia's military intervention.

On 22 December 1975, the UN Security Council issued Resolution 384, which made similar demands to those contained in General Assembly Resolution 3485; that is, calling on Indonesia to

withdraw its troops and to respect the East Timorese people's right to self-determination. In a session of the Security Council held on 22 April 1976, a further resolution (No 389) making similar demands was passed.

Resolutions of this kind continued to be passed by the UN from 1975 to 1982. Beginning in 1982, the question of East Timor was taken up by UN Secretary General Xavier Perez de Cuellar, who called on the Indonesian and Portuguese governments to reach a peaceful solution based on UN-sponsored talks. During these talks which took place from 1982, the 2 sides agreed to a visit to East Timor by a Portuguese parliamentary delegation. The visit, scheduled for 4 November 1991, was suspended a week before this date, however, as a result of Indonesia's objection to the inclusion in the delegation's party of Australian journalist, Jill Jolliffe, who the Indonesian side claimed had written articles critical of Indonesia's position. Since Portugal was also determined not to give ground on this question as it contravened the terms of the visit agreed upon under UN sponsorship, the visit was suspended and negotiations have been at a standstill ever since.

At the beginning of April 1992, the Portuguese government sent a letter to the UN Secretary General, Boutros Boutros-Ghali, requesting that negotiations be resumed, and the UN Secretary General subsequently sent an official letter to the Indonesian government via its representative. After Nana Sutresna submitted this news to President Suharto, the President stated Indonesia's willingness to cooperate with the UN in seeking an internationally acceptable solution to the East Timor question (Kompas, 18 April 1992, page 1). It should be clear to the Public Prosecutor from this statement of the President in which he acknowledges the need for an internationally acceptable solution, that the question of East Timor is not an internal problem for Indonesia (see UN Resolutions attached as Appendix).

C. Development

With regard to development, no one can deny that almost every road in East Timor is now asphalted, that multi-storied buildings have sprung up in almost every part of Dili, electricity is beginning to be provided to village communities, schools have been built everywhere, many East Timorese are studying outside, and many have their own cars, efforts at eradicating illiteracy are being carried out, and many new churches and parishes are being established in the villages and sub-districts.

If the East Timorese people were at all materialistic, then it would be likely that they would have accepted this development as an alternative to respect for their human rights. But the people aspire to something other than multi-storied houses and asphalted roads, and that thing is independence, freedom and a united and humanitarian community. The right to independence and freedom cannot be traded off for cars, asphalted roads or other material possessions. Development is like a noose set up by the Indonesian government to ensnare the Maubere people. Proof of this can be seen in these very court cases. One of the excuses used by the Public Prosecutor to charge us is that we have accepted scholarships of Rp 100,000 per month. This has meant that we have now had to compromise our freedom to discuss our human rights. Another example is the Santa Cruz massacre of 12 November 1991. Development in East Timor has meant that the people have had to compromise their right to express their aspirations. Because of their rejection of Indonesia's material gifts, they were slaughtered and their corpses now join the sand and stones in forming the foundations of Indonesian development.

Your Honour, we the people of East Timor, are not prepared to trade our souls for paved roads, nor our freedom for cash. It is the government's obligation to give us an education since it has robbed us of our rights. Our freedom to determine our relations with foreign countries, our right to manage our natural resources, our right to ask for foreign aid to help us overcome our shortages as has been done by Indonesia; all of these Indonesia has robbed us of. We shouldn't look only at what the East Timorese now have in their hands, but we should also study what the processes were in obtaining these things.

It could be said that our poverty and backwardness have been made use of by Indonesia in requesting aid. Because of this, it is inappropriate to tell us that we should be grateful to you. If the Public Prosecutor truly believes that lives can be traded off and that a person's human rights can be bought, then this is where the essential difference between us lies.

From one point of view, this government has succeeded in carrying out its political development strategy, since with it it has managed for 16 years to stall the process of a UN-backed resolution of our problem. It has failed because it has not taken into account the spirit of the East Timorese people.

D) The Political Thinking of the East Timorese People

This question has already been discussed above, however, we intentionally raise it again here in order to emphasize a number of points. The people of East Timor are anti-colonialist, anti-imperialist, anti-fascist and anti-neo-colonialist. The people began their struggle for freedom in 1669 when the King of Oecussi, Francisco Ornai, led an rebellion as a result of his unfulfilled desire to be promoted to the position of Governor of East Timor. As a result of this disturbance he was exiled to Flores. In the years that followed, similar rebellions were staged in Cova, in the district of Suai, in Cotobabe in the district of Bobonaro, in Laklo in the district of Manatuto, in Viqueque and Vemasse. The largest rebellion up to the time of the Second World War was the Manufahi rebellion of 1912, led by King Boaventura. The rebellion was not a success, however, because as a result of communication problems, he was unable to coordinate the action in cooperation with the other petty kingdoms. Because of their isolation, the Portuguese army was able to crush the rebellion in a matter of months. King Boaventura was forced by the Portuguese to flee, until we was finally caught by them in Balibo and consequently imprisoned in Aipelo until the time of his death. His corpse is buried in the Santa Cruz cemetery.

The Manufahi rebellion illustrates the honest determination and will of the people to fight for their liberation and independence from a colonial government. Following this great rebellion, others took place in Mindelo in Maubisse in 1939, and another in Watu-Lari in 1959. Although few of their rebellions were successful, before and after the Second World War, the East Timorese people already had considerable experience as freedom fighters. Despite their inability to gain control of their homeland, these rebellions served to strengthen their resolve, their self-respect and their desire to struggle for their freedom and their other human rights. By 1975, this desire to expel the colonialists from their homeland had a chance to become a reality. The Portuguese were forced to leave East Timor. However, in only a matter of months, whilst the former owners were in the process of finalising their affairs, a new group of foreigners, taking advantage of the confusion of the change over period, stepped in to rob the East Timorese of their rights once more.

In order to defend their dignity and their independence, from 1975 to the present moment, the people of East Timor have continued to oppose Indonesia's occupation, even those this opposition has cost them hundreds of thousands of lives, and the imprisonment and disappearance of thousands of others.

Your Honour, Public Prosecutor, Legal Advisors, Ladies and Gentlemen, according to its two versions of the incident of November 12 1991, the Indonesian government claims that between 19 and 50 people died on this occasion. That event represents only a fraction of the atrocities committed over 16 years. The slaughter on the Dili harbour, the murder of civilians with war machines from 1977 to 1988 everyday took the lives of hundreds of civilians, but all of this has been kept from the world by the government. Extinguishing human lives is not acceptable, carrying out aggression and robbing a people of their freedom is a human rights violation. The demonstration carried out by the youth of East Timor on November 12 was a pure and simple expression of their aspirations. The response their action elicited and the way in which their bodies were hidden is inhumane. Indonesia has rule of law, whereby every action, and particularly those of the government apparatus, should have a legal basis. Why are those military men directly responsible not being tried in this court?

Why is it those protesting immoral and inhumane treatment that are being sentenced to so many years in prison? Since the invasion of our country was something which contravenes the ideology and constitution of this state, why doesn't this court try all of those who engineered the invasion?

Ladies and Gentlemen, 99% of the people of East Timor are Catholics, and as such they have been taught to hold in high regard the ideals of humanitarianism, of respect for one's fellow man, and for God's truth. The Catholic Church of East Timor is not part of the Indonesian Bishop's Conference, but is directly administered from the Vatican. In 1989, East Timor's Bishop Carlos Filipe Belo Ximenes, the leader of the Church in East Timor who is also the Pope's representative, wrote a formal letter to the UN Secretary General, Xavier Perez de Cuellar, requesting that the UN sponsor a referendum which would give the people the chance to determine their future.

This fact would indicate that East Timor is hardly part of the United Republic of Indonesia.

Your Honour, now that we have presented the background to our case, we ask your permission to now move on to the question of the court cases we have been facing for some weeks now.

ARREST AND INTERROGATION

1) Arrest

- I was arrested on the morning of 24 November 1991, along with five colleagues in my rented lodgings at Jalan Raya Sesetan, Gang Taman Sari 10, Denpasar, Bali.

- Along with the group of arresting officers was a group of civilians whose identity or origins I was not aware of.

- At the time of my arrest, the officer did not present a warrant for my arrest.

- Without a search warrant, they proceeded to raid the house, carrying our the search independently of any of the occupants of the house.

- I was shown 2 grenades and 2 other explosive devices which had supposedly been found. They admitted that none of these devices would be discussed seriously during the investigations at the police station or in court, and that they would not be presented as evidence during the trial.

- At that time, the police officers threatened to shoot me if I moved.

- Once I was in Polda Nusra, I was threatened by many people, ridiculed and humiliated with inhumane words.

- I was isolated in a large room and was prevented from receiving visits from my friends.

- Every evening, individuals dressed in civilian clothing would come and threaten me.

- Before putting me in my cell, I was stripped naked, and forced to spend the night without clothing.

- My wallet and money were both seized.

- I was not allowed the use of writing materials in my cell.

2) Interrogation

During the interrogations:

- Although on each occasion we requested the presence of a legal advisor, this was never granted us. Both the police and legal investigators told us that legal advisors were not present because it was necessary for the process of our investigation to be completed as quickly as possible.

- During investigations, we were forced to answer every question, even when we didn't know the answers to many of the questions they asked.

- The investigations were endless, sometimes lasting from morning until midnight.

- We were told by one investigator that it was not necessary for those charged with subversion to be accompanied by a legal advisor.

- Even when we were in poor health, they forced us to continue with the interrogations. Our pleas were given only fleeting attention.

- During the whole time we were detained in the Polda prison, our cells were subject to random checks at any moment, and any writing materials that were found in our possession during the process of investigation were all seized.

- Our meetings with our legal advisor were always restricted, making it difficult for us to discuss pre-trial matters. This fact severely disadvantaged us with the result that the Judge rejected our complaints regarding the methods of our arrest, the raid on our house and our interrogation, on the grounds that they had not been submitted in accordance with legal norms.

CRIMINAL CHARGE

1) Official Report of Investigation. On 27 April 1992, at the time I was being investigated, I stated in front of the Judge that most of what was written in the Official Report was untrue since, in the absence of a legal advisor, I had been forced by the police and legal investigators to answer questions and admit to things I had no idea about.

2. In demanding a sentence of 15 years, the Public Prosecutor has adhered closely to the Official Report of an investigation which was not conducted according to correct legal procedures.

3. The Public Prosecutor clearly views this court case as a joke since all of the factors outlined in this courtroom have been ignored.

In order to prove points 2 and 3 above, I would like to outline just a few matters which are in conflict with the facts as expressed in this courtroom:

1) Point 1, page 56 of the charge claims:

It is true that in 1986 the accused, along with witness Joao Freitas da Camara, had received an open letter from Xanana Gusmao, East Timor's Fretilin Commander, which was directed at East Timorese high school and university students as well as Catholic youth outside East Timor, and asked them to consolidate their unity in the form of an organisation to fight for an East Timor independent of the United Republic of Indonesia.

OBJECTION: I have never read a letter entitled `Message to the Catholic Youth of East Timor in Indonesia', and I have already made this clear in this court. The witness, Joao Freitas da Camara, denies that he ever forwarded such a letter to me and that we discussed its contents.

2) Point 2, page 56 of the charge claims:

It is true that in 1987 in Denpasar, Bali, the accused spoke on the telephone with Jose Ramos

Horta, a Fretilin figure based in Australia, and that at that time Jose Ramos Horta suggested to the accused that he form a clandestine student organisation to fight for an independent East Timor.

OBJECTION: The Public Prosecutor bases himself on the false information contained in the Official Record of Investigation and on evidence given by one person, that is, Clemente Soares.

3) Point 4, page 56 of the Criminal Charge claims:

It is true that the accused, as Chairperson of Renetil, had taken an oath as member and leader of the organisation, to fight for the independence of East Timor.

OBJECTION: a) this claim is in conflict with the testimonies of Joao Freitas da Camara, Domingos Bareto, Virgilio da Silva Guterres and Jose Luis de Oliveira. Again, the prosecution bases itself on the false information contained in the Official Record of Investigation. b) Amongst the testimonies, both written and presented in person, there is no-one by the name of Jose Ave Maria, and I don't know where and when the Public Prosecutor heard the testimony from this person.

4) Point 7, page 68 of the Criminal Charge claims:

It is true that on 27 October 1991, the accused led a Renetil meeting in Gor Malang in order to coordinate the activities of the central Renetil committee and those of the other branches, under the instruction of Constancio Pinto, in preparation for a demonstration to coincide with the visit of a Portuguese parliamentary delegation to Dili on 4 November 1991.

OBJECTION: This claim is untrue and does not coincide with the information provided by witnesses.

ON THE QUESTION OF OUR CITIZENSHIP

Because of the 16 year old occupation of our land by Indonesia, we have been forced to carry Indonesian identity cards (KTP), despite the fact that in the international community there is no law obliging us to take Indonesian citizenship.

In accordance with the resolutions of the UN, which acknowledge Portugal as the only legitimate administering power in East Timor, I am legally a citizen of Portugal. The evidence of the Public Prosecutor is unacceptable since he himself knows that I am an East Timorese, born in Ainaro on 26 February 1966, and in addition the whole world is aware of the Indonesian military invasion of 7 December 1975 and the subsequent unjust processes followed.

Conclusion

From the factors outlined above, we can draw the following conclusions:

- Integration is not the wish of the East Timorese people, because since 1975 they have constantly fought against it.

- The integration of East Timor is illegal since the international community has constantly condemned it and has passed resolutions in both the UN General Assembly and the Security Council demanding the withdrawal of Indonesian armed troops and the respect of the people's right to self-determination.

- Since the integration of East Timor is illegal, then this invalidates the legal basis of the charges laid against us.

- The Balibo Declaration represents a political maneuver used by Indonesia to justify its invasion.

- The people of East Timor drove the Portuguese colonialists from their land so that they could achieve independence, not integration.

- The seeds of the desire to be free of colonialism have been planted in the hearts of the people since 1669.

- In the eyes of the East Timorese, the Indonesian presence in their land has meant the continuation of colonial rule, with only the colour of the colonizer's skin being different.

- Our demands of Portugal are not that they colonise us once again, but that they return to complete the decolonisation process.

- The struggle of the East Timorese people is to defend and fight for their independence.

- What the people aspire to is a referendum which will provide the only democratic solution and will not disadvantage any party.

- The Indonesian invasion of East Timor represents a violation of the Panca Sila, the 1945 Constitution, the Ten Principles of Bandung and the United Nations Charter.

- The Church in East Timor does not accept integration.

- The massacre of civilians on 12 November was a ruthless act that nonetheless represents only a small part of the atrocities carried out over the past 16 years.

- The struggle for self-determination has become the struggle of an entire generation of East Timorese.

- Development in East Timor has been used as a political instrument, and not to develop an integrated society.

VII. REGRET

As someone who has studied the state principles and the 1945 Constitution, I deeply regret the way in which the noble ideals embodied in them have been betrayed by those in power. Those in power have attempted to interpret the Panca Sila and the 1945 Constitution according to their own ambitions and egos, not the other way round. These individuals should be tried by the poor who are living under bridges and those who conceived the principles of the Panca Sila and the 1945 Constitution, and be held accountable for their deviant actions.

VIII. REQUEST

Your Honour, I am being tried as a result of the problem of East Timor, which as a normal human being, I have been interested in solving.

I am not the first and nor will I be the last to be thrown in and out of jail because of the East Timor question. From 1975 to the present date, thousands of East Timorese have been imprisoned for the same reason, but the situation has remained unchanged, still unresolved. Therefore I take this opportunity to request that the Honourable Judge work with the decision makers to carry out the noble act of facilitating an open and democratic dialogue involving all parties in an international solution to the East Timor question.

Sentencing someone like me to 15 years imprisonment is no way to solve the problem of East Timor. Therefore, I request that I be released from all of the charges laid against me.

IX. CONCLUSION

Before we end this defence, once again we pray to God that the innocent souls of all those killed be accepted into His Kingdom, and that those still living in this world may be blessed with His wisdom and strength.

We thank Your Honour, the Public Prosecutor, our Legal Advisors and all those who have taken the time to attend this hearing. I hope that this defence will be of benefit.

GOD IS WITH US

Jakarta, 11 May, 1992
Fernando de Araujo

* Right is right and wrong is wrong*

Annex:

Series of United Nations General Assembly and Security Council Resolutions passed on the question of East Timor.